

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JUAN AUTILANO MERCED, D48678,

Petitioner,

v.

PATRICK COVELLO, Warden,

Respondent.

Case No. [23-cv-04763-CRB](#) (PR)

**ORDER DISMISSING PETITION FOR
A WRIT OF HABEAS CORPUS AS
SECOND OR SUCCESSIVE PETITION**

(ECF No. 5)

Petitioner, a state prisoner currently incarcerated at Mule Creek State Prison in Ione, California, has filed a pro se second or successive petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging his 1999 conviction and sentence from Alameda County Superior Court. His first federal petition was denied on the merits on February 10, 2004. See Merced v. McGrath, No. 03-cv-01904-CRB (N.D. Cal. Feb. 10, 2004) (memorandum and order).

A second or successive petition may not be filed in this court unless petitioner first obtains from the United States Court of Appeals for the Ninth Circuit an order authorizing this court to consider the petition. See 28 U.S.C. § 2244(b)(3)(A). Petitioner has not obtained such an order from the Ninth Circuit. The instant petition accordingly is DISMISSED without prejudice to refile if petitioner obtains the necessary order.

But based solely on petitioner's affidavit of poverty, his application to proceed in forma pauperis (IFP) under 28 U.S.C. § 1915 (ECF No. 5) is GRANTED.

The clerk is directed to close the case and terminate all pending motions as moot.

IT IS SO ORDERED.

Dated: November 9, 2023



CHARLES R. BREYER
United States District Judge